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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-458

HANNAHVILLE INDIAN COMMUNITY, *et al.*,
Petitioners,

v.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Petitioners (Indian tribes which were parties to the treaty of Greeneville of August 3, 1795, 7 Stat. 49 or their representatives) pray that a writ of certiorari issue to the United States Court of Claims to review the judgment of that Court entered in this case on June 25, 1975.

OPINIONS BELOW

The opinion of the Court of Claims, rendered on June 25, 1975 by a three-judge panel of that Court, on appeal from the Indian Claims Commission, and the decision of the Indian

Claims Commission, 31 Ind. Cl. Comm. 89, August 9, 1973, are printed as Appendix A and B, to Petition No. 75-389, filed September 11, 1975 in this same case in this Court as *James Strong, et al. v. United States.*

JURISDICTION

The judgment of the Court of Claims was entered on June 25, 1975; no rehearing was sought; no extensions of time to petition for certiorari were sought.

Jurisdiction is invoked under the Indian Claims Commission Act, 60 Stat. 1049, 27 U.S.C. § 70s(c), and 28 U.S.C. § 1255.

QUESTION PRESENTED

Did the Royal Decree of 1763 by the King of England grant a title to the Indian Tribes occupying what is now the State of Ohio which title the United States was obligated to recognize after assuming sovereignty over that territory by the Treaty of Paris of 1783?

TREATIES AND STATUTES INVOLVED

Pertinent statutes are the Treaty of Greeneville of August 3, 1795, 7 Stat. 49, and the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. §§ 70 *et seq;* Decree of George III, dated October 7, 1763.

STATEMENT OF THE CASE

Royce Area 11 comprises approximately three-fifths of the land of the State of Ohio (the eastern and southern parts) and a small segment of southeastern Indiana. It was

jointly ceded by twelve confederated tribes of Indians at the Treaty of Greeneville on August 3, 1795. Congress ratified said Treaty on December 2, 1795 (7 Stat. 49, II Kappler 39). Article X of said Treaty provided:

> "All other treaties heretofore made between the United States and the said Indian tribes, or any of them, since the treaty of 1783, between the United States and Great Britain, that come within the purview of this treaty, shall henceforth cease and become void."

REASONS FOR GRANTING THE WRIT

(1) Said land was "Indian land" within the meaning of *United States v. Alcea Band of Tillamooks,* 329 U.S. 40 (1946).

(2) Furthermore, said land had been recognized as "Indian land" by a royal proclamation of the King of England dated October 7, 1763, .(See Appendix A) as well as by said Treaty of Greeneville.

Both of said considerations were ignored by the United States Court of Claims and the Indian Claims Commission in this case (see 31 Ind. Cl. Com. 89 and Appeal 1-74, decided June 25, 1975, in *James Strong, et al. U.S.*, under the Indian Claims Commission Act (25 U.S.C. § 70 *et seq.*), All of the Indian claimants were denied any compensation whatsoever for the taking by the United States of this large and valuable territory except for a few small portions of the same which were separately accorded to several of the individual tribes.

The said Indian Claims Commission and the Court of Claims have failed to properly or fairly or legally or

equitably interpret or apply the said Indian Claims Commission Act and the said Treaty of Greeneville and the precedents or laws thereto appertaining, or a previous act of the preceding sovereign granting reorganized title to the plaintiff Indians.

CONCLUSION

For said reasons, the writ of certiorari to the United States Court of Claims should be granted.

Respectfully submitted,

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APPENDIX A

Proclamation of 1763
October 7, 1763

(Annual Register for 1763, **pp. 208-13)**

The Proclamation of 1763, forbidding white settlement beyond a line drawn roughly along the crest of the Appalachians, was a carefully planned element in British imperial policy. It was designed to place North American possessions on a more stable footing following the defeat of the French in the Great War for Empire. The Indians of the interior, who regarded themselves as allies rather than subjects of the French, were startled to hear rumors that the English now claimed sovereignty over their territory. During the summer of 1763, the Indians – now stirred to action – seized post after post on the frontier from British troops. The British foreign ministry, under the leadership of Charles Wyndham, Second Earl of Egremont, one of the King's two principal Secretaries of State, sought to reassure the Indians that their lands were secure and that they would be acquired by the English through fair purchase only. The Proclamation, against which American frontiersmen would later rail, was vital in safeguarding the security of the newly won empire. While the Proclamation proved in fact, as George Washington phrased it in 1767, a "temporary expedient to quiet the minds of the Indians," it was also an attempt to develop a more civilized policy toward the Indian.

By The King A Proclamation

WHEREAS WE HAVE taken into our royal consideration the extensive and valuable acquisitions in America secured to our Crown by the late definitive treaty of peace

concluded at Paris the 10th day of February last; and being desirous that all our loving subjects, as well of our kingdom as of our colonies in America, may avail themselves, with all convenient speed, of the great benefits and advantages which must accrue therefrom to their commerce, manufactures, and navigation; we have thought fit, with the advice of our Privy Council, to issue this our Royal Proclamation, hereby to publish and declare to all our loving subjects that we have, with the advice of our said Privy Council, granted our letters patent under our Great Seal of Great Britain, to erect within the countries and islands ceded and confirmed to us by the said treaty, four distinct and separate governments, styled and called by the names of Quebec, East Florida, West Florida, and Grenada, and limited and bounded as follows, viz:

First, the government of Quebec, bounded on the Labrador coast by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the South end of the lake Nipissim; from whence the said line, crossing the river St. Lawrence and the Lake Champlain in 45 degrees of North latitude, passes along the High Lands, which divide the rivers that empty themselves into the said river St. Lawrence, from those which fall into the sea; and also along the North coast of the Bayes des Chaleurs, and the coast of the Gulph of St. Lawrence to Cape Rosieres, and from thence crossing the mouth of the river St. Lawrence by the West end of the island of Anticosti, terminates at the aforesaid river St. John.

Secondly, The governments of East Florida, bounded to the Westward by the Gulph of Mexico and the Apalachicola river; to the Northward, by a line drawn from that

part of the said river where the Catahoochee and Flint rivers meet, to the source of St. Mary's river, and by the course of the said river to the Atlantic Ocean; and to the East and South by the Atlantic Ocean, and the Gulph of Florida, including all islands within six leagues of the sea coast.

Thirdly, The government of West Florida, bounded to the Southward by the Gulph of Mexico, including all islands within six leagues of the coast from the river Apalachicola to lake Pontchartrain; to the Westward by the said lake, the lake Maurepas, and the river Mississippi; to the Northward, by a line drawn due East from that part of the river Mississippi which lies in thirty-one degrees North latitude to the river Apalachicola, or Catahoochee; and to the Eastward by the said river.

Fourthly, The government of Grenada, comprehending the island of that name, together with the Grenadines, and the islands of Dominico, St. Vincent, and Tobago.

And to the end that the open and free fishery of our subjects may be extended to, and carried on upon the coast of Labrador and the adjacent islands, we have thought fit . . . to put all that coast, from the river St. John's to Hudson's Streights, together with the islands of Anticosti and Madelane, and all other smaller islands lying upon the said coast, under the care and inspection of our governor of Newfoundland.

We have also . . . thought fit to annex the islands of St. John and Cape Breton, or Isle Royale, with the lesser islands adjacent thereto, to our government of Nova Scotia.

We have also . . . annexed to our province of Georgia, all the lands lying between the rivers Atamaha and St. Mary's.

A. 4

And . . . we have . . . given express power and direction to our governors of our said colonies respectively, that so soon as the state and circumstances of the said colonies will admit thereof, they shall, with the advice and consent of the members of our council, summon and call general assemblies within the said governments respectively, in such manner and form as is used and directed in those colonies and provinces in America, which are under our immediate government; and we have also given power to the said governors, with the consent of our said councils, and the representatives of the people, so to be summoned as aforesaid, to make, constitute, and ordain laws, statutes and ordinances for the public peace, welfare, and good government of our said colonies, and of the people and inhabitants thereof, as near as may be, agreeable to the laws of England, and under such regulations and restrictions as are used in other colonies; and in the mean time, and until such assemblies can be called as aforesaid, all persons inhabiting in, or resorting to, our said colonies, may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England: for which purpose we have given power under our great seal to the governors of our said colonies respectively, to erect and constitute, with the advice of our said councils respectively, courts of judicature and public justice within our said colonies, for the hearing and determining all causes as well criminal as civil, according to law and equity, and as near as may be, agreeable to the laws of England, with liberty to all persons who may think themselves aggrieved by the sentence of such courts, in all civil cases, to appeal, under the usual limitations and restrictions, to us, in our privy council.

And whereas it is just and reasonable, and essential to

our interest and the security of our colonies, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories as, not having been ceded to or purchased by us, are served to them, or any of them, as their hunting-grounds; we do therefore, with the advice of our Privy Council, declare it to be our royal will and pleasure, that no Governor or commander in chief, in any of our colonies of Quebec, East Florida, or West Florida, do presume upon any pretence whatever, to grant warrants of survey, or pass any patents for lands beyond the bounds of their respective governments, as described in their commissions; as also that no Governor or commander in chief of our other colonies or plantations in America do presume for the present, and until our further pleasure be known, to grant warrants of survey or pass patents for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic Ocean from the west or northwest; or upon any lands whatever, which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians, or any of them.

And we do further declare it to be our royal will and pleasure, for the present as aforesaid, to reserve under our sovereignty, protection, and dominion, for the use of the said Indians, all the land and territories not included within the limits of our said three governments, or within the limits of the territory granted to the Hudson's Bay Company; as also all the land and territories lying to the westward of the sources of the rivers which fall into the sea from the west and northwest as aforesaid; and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever,

or taking possession of any of the lands above reserved without our special leave and license for that purpose first obtained.

And we do further strictly enjoin and require all persons whatever, who have either wilfully or inadvertently seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such settlements.

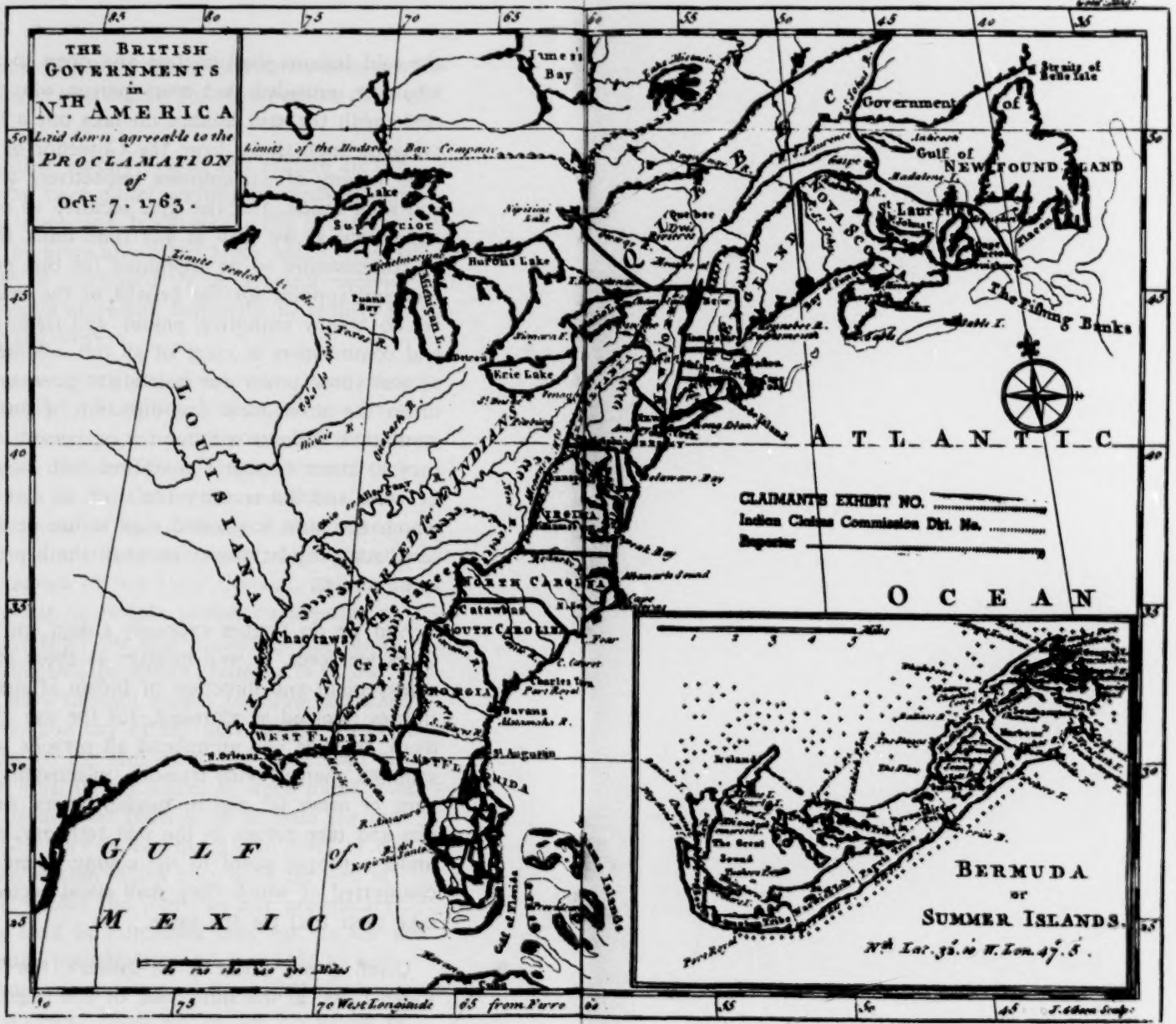
And whereas great frauds and abuses have been committed in the purchasing lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians; in order, therefore, to prevent such irregularities for the future, and to the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our Privy Council, strictly enjoin and require, that no private person do presume to make any purchase from the said Indians of any lands reserved to the said Indians within those parts of our colonies where we have thought proper to allow settlement; but that if at any time any of the said Indians should be inclined to dispose of the said lands, the same shall be purchased only for us, in our name, at some public meeting or assembly of the said Indians, to be held for that purpose by the Governor or commander in chief of our colony respectively within which they shall lie: and in case they shall lie within the limits of any proprietary government, they shall be purchased only for the use and in the name of such proprietaries, conformable to such directions and instructions as we or they shall think proper to give for that purpose. And we do, by the advice of our Privy Council, declare and enjoin, that the trade with

the said Indians shall be free and open to all our subjects whatever, provided that every person who may incline to trade with the said Indians do take out a license for carrying on such trade, from the Governor or commander in chief of any of our colonies respectively where such person shall reside, and also give security to observe such regulations as we shall at any time think fit, by ourselves or commissaries to be appointed for this purpose, to direct and appoint for the benefit of the said trade. And we do hereby authorize, enjoin, and require the Governors and commanders in chief of all our colonies respectively, as well those under our immediate government as those under the government and direction of proprietaries, to grant such licenses without fee or reward, taking especial care to insert therein a condition that such license shall be void, and the security forfeited, in case the person to whom the same is granted shall refuse or neglect to observe such regulations as we shall think proper to proscribe as aforesaid.

And we do further expressly enjoin and require all officers whatever, as well military as those employed in the management and direction of Indian affairs within the territories reserved as aforesaid, for the use of the said Indians, to seize and apprehend all persons whatever who, standing charged with treasons, misprisions of treason, murders, or other felonies or misdemeanors, shall fly from justice and take refuge in the said territory, and to send them under a proper guard to the colony where the crime was committed of which they shall stand accused, in order to take their trial for the same.

Given at our Court at St. James's, the 7th day of October 1763, in the third year of our reign.

GEORGE, R.


THE BRITISH GOVERNMENTS in NTH AMERICA
Laid down agreeable to the PROCLAMATION of Octr 7. 1763.
Government of
Gulf of
NEWFOUNDLAND
NOVA SCOTIA
The Fishing Banks
ATLANTIC
OCEAN
CLAIMANTS EXHIBIT NO.
Indian Claims Commission Dkt. No.
Reporter
LOUISIANA
LANDS RESERVED for the INDIANS
GULF of MEXICO
WEST FLORIDA
NORTH CAROLINA
SOUTH CAROLINA
GEORGIA
Chactaws
Creeks
Catawbas
Savana
St Augustin
Erie Lake
Hurons Lake
Lake Superior
Bermuda
Bahama Islands
BERMUDA or SUMMER ISLANDS.
Nth Lat. 32. 20 W. Lon. 45°. 5'.